

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**DEFENDANTS, PENN MANOR SCHOOL DISTRICT, PENN MANOR SCHOOL  
BOARD, DONALD STEWART, JANICE M. MINDISH, BRIAN D. BADDICK,  
PHILIP GALE, AND CAROLE FAY'S TRIAL MEMORANDUM**

The Defendants, Penn Manor School District, Penn Manor School Board, Donald Stewart, Superintendent of the Penn Manor School District, Janice M. Mindish, Principal of Penn Manor High School, Brian D. Baddick, Assistant Principal of Penn Manor High School, Philip Gale, Assistant Principal of Penn Manor High School, and Carole Fay,

teacher and Agriculture Coordinator at Penn Manor High School (hereinafter sometimes collectively referred to as “Defendants”),<sup>1</sup> present the following Trial Memorandum, in accordance with the Court’s July 9, 2003 Jury Trial Attachment Order.

**(a) Defendants’ Exhibits**

- D-1 Complaint
- D-2 “Summary of Events in Joshua Shuman Case” – 2 Page document with typewritten notes of Mr. Gale and Ms. Mindish
- D-3 Undated handwritten notes of Mr. Gale (EMU – Lancaster note pad)
- D-4 December 10, 2001 Correspondence from Mr. Gale to the Parents or Guardians of Joshua Shuman regarding suspension.
- D-5 December 17, 2001 Memorandum regarding “Reinstatement of Suspended Student”
- D-6 January 23, 2002 Correspondence from Joshua Shuman to Janice Mindish
- D-7 Undated handwritten statement of Jeremy Fritsch (2 pages)
- D-8 Joshua Shuman Deposition Transcript
- D-9 Joshua Shuman Deposition Exhibit – Shuman 1 (depiction of classroom)
- D-10 Undated handwritten statement of Joshua Shuman (2 pages – Joshua Shuman Deposition Exhibit – Shuman 2)
- D-11 Jeremy Fritsch Deposition Transcript
- D-12 Teresa Shertzer Deposition Transcript
- D-13 Complete Copy of Records Produced by Life Span Psychological Services
- D-14 Complete Copy of Joshua Shuman Educational Records from Penn Manor School District

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<sup>1</sup> C. Willis Herr, Richard L. Frerichs, Jeffrey E. Lyon, Patrick T. Kline, Donald H. Anderson, H. Thomas Herr, Kelly K. Withum, Donna Wert, Jeffrey G. Kreider, Dolores Warfel, and Steve Skrocki, were each individually named defendants in Plaintiffs’ Complaint. By Stipulation of the parties dated November 4, 2003 and Court Order dated November 10, 2003, each of these defendants were voluntarily dismissed from this case. In their response to Defendants’ Motion for Summary Judgment, Plaintiffs also withdrew their claims against Gary Campbell.

D-15 Report of Dr. Gerald Cooke  
D-16 Curriculum Vitae of Dr. Gerald Cooke

Defendants reserve the right to use and/or introduce any exhibits identified by Plaintiffs. Defendants further reserve the right to amend this list based upon the Court's ruling upon the pending Motion for Summary Judgment.

**(b) Defendants' Expert Witness**

Gerald Cooke, Ph.D.  
4 East Germantown Pike  
Plymouth Meeting, Pennsylvania 19462

Fields of Expertise: Clinical and forensic Psychology

**(c) Defendants' Expert Witnesses Curriculum Vitae**

See attached Exhibit "A".

**(d) Defendants' Fact Witnesses**

Mr. Philip Gale  
100 East Cottage Avenue  
Millersville, Pennsylvania 17551  
(represented by Sweet, Stevens, Tucker & Katz LLP)

Defendants will call Mr. Gale to testify concerning the investigation, resulting administrative decision, suspension, reinstatement, and Mr. Shuman's completion of the 2001-2002 school year and return for the 2003-2004 school year.

Mr. Brian Baddick  
100 East Cottage Avenue  
Millersville, Pennsylvania 17551  
(represented by Sweet, Stevens, Tucker & Katz LLP)

Defendants may call Mr. Baddick to testify concerning the investigation, resulting administrative decision, suspension, reinstatement, and Mr. Shuman's completion of the 2001-2002 school year and return for the 2003-2004 school year.

Ms. Janice Mindish  
100 East Cottage Avenue  
Millersville, Pennsylvania 17551  
(represented by Sweet, Stevens, Tucker & Katz LLP)

Defendants may call Ms. Mindish to testify concerning the investigation, resulting administrative decision, suspension, reinstatement, and Mr. Shuman's completion of the 2001-2002 school year and return for the 2003-2004 school year.

Ms. Olivia Becker  
P.O. Box 334  
West Willow, Pennsylvania 17583

Ms. Becker is expected to testify to the non-consensual sexual contact engaged in by Mr. Shuman on December 7, 2001, her reaction to the non-consensual sexual contact, and her involvement in the resulting investigation.

Defendants reserve the right to call any witness identified by Plaintiffs. Defendants reserve the right to amend this list based upon the Court's ruling on the pending Motion for Summary Judgment.

**(e) Itemized Statement of Plaintiffs' Damages**

Unliquidated; see Plaintiffs' pretrial memorandum.

**(f) Significant and/or Unique Legal and Procedural Issues**

All significant and/or unique legal issues are set forth in detail in the Defendants Motion for Summary Judgment, Brief and Reply Brief in Support thereof.

**(g) Names and Addresses of Parties**

All remaining defendants are current employees of the Penn Manor School District and are represented by the undersigned.

**(h) Names, Address and Telephone Number for Trial Counsel**

Ellis H. Katz  
Jason R. Wiley  
331 Butler Avenue  
P.O. Box 5069  
New Britain, Pennsylvania 18901  
(215) 345-9111  
(215) 348-1147 - Facsimile

**(i) Proposed Voir Dire Questions**

See attached Exhibit "B".

**(j) Proposed Verdict Sheet**

See attached Exhibit "C".

**(k) Other Matters**

Defendants respectfully request a Daubert hearing relating to the Plaintiffs' proffered expert, Edward F. Dragan, Ed.D.

Respectfully submitted:

SWEET, STEVENS, TUCKER & KATZ LLP

Date: February 9, 2004

By: /s/ Jason R. Wiley

Jason R. Wiley, Esquire, Atty I.D. #79478  
331 Butler Avenue, P.O. Box 5069  
New Britain, Pennsylvania 18901  
215-345-9111  
215-348-1147 - Facsimile

Attorney for Defendants  
Penn Manor School District, Penn Manor  
School Board, Donald Stewart, Janice M.  
Mindish, Brian D. Baddick, Philip Gale, and  
Carole Fay.

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**CERTIFICATE OF SERVICE**

I, Jason R. Wiley, Esquire, hereby certify that the attached Defendants, Penn Manor School District, Penn Manor School Board, Donald, Janice M. Mindish, Brian D. Baddick, Philip Gale, and Carole Fay's Trial Memorandum was served *via* first class mail, upon the following:

Deirdre A. Agnew, Esquire  
Goshen Executive Center, Bldg 400A  
1450 East Boot Road  
West Chester, Pennsylvania 19380

SWEET, STEVENS, TUCKER & KATZ LLP

Date: February 9, 2004

By: /s/ Jason R. Wiley

Jason R. Wiley, Esquire, Atty I.D. #79478  
331 Butler Avenue, P.O. Box 5069  
New Britain, Pennsylvania 18901  
215-345-9111  
215-348-1147 - Facsimile

Attorney for Defendants,  
Penn Manor School District, Penn Manor  
School Board, Donald Stewart, Janice M.  
Mindish, Brian D. Baddick, Philip Gale, and  
Carole Fay.